

**RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA

December 8, 2011

9:00 a.m.

Room 438, State House, Augusta

Convene

- Welcome and Introductions
- Existing public records exceptions awaiting recommendations
 1. (54) 22 MRSA §8754 - sentinel events (AG, DHHS, other interested parties): *discussion*
 2. (66) 24 MRSA §2510 (and §2505) professional competence reports (Medical licensing boards, other interested parties): *finalize draft?*
 3. (67) 24 MRSA §2510-A professional competence review records (Medical licensing boards, other interested parties): *discussion? review draft?*
 4. (57) 23 MRSA §63 - right-of-way divisions' records (MTA and MaineDOT): *review draft*
 5. (18) & (19) 22 MRSA §§1696-D and 1696-F - Community Right-to-know: *review letter*
 6. (62) 23 MRSA §8115 - Northern New England Passenger Rail Authority (NNEPRA):
review new draft, discussion
- Other?
- Scheduling future subcommittee meetings, if necessary

Adjourn

Scheduled meetings:

Thursday, December 8, 2011, 10:00 a.m. Bulk Records and Legislative Subcommittees
Thursday, December 8, 2011, 1:00 p.m., Right to Know Advisory Committee

G:\STUDIES 2011\Right to Know Advisory Committee\Agendas\DRAFT AGENDA for Public Records Subcommittee December 8 2011.doc
(11/29/2011 11:28:00 AM)

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 22 - 25

Exceptions tabled for review in 2011

Includes recommendations from Sept. 12, Sept. 29 November 17 Subcommittee meetings and November 17 Advisory Committee meeting

Revised 11/29/2011 9:23 AM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
15	22	1555-D	1	Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers	DHHS OAG	<ul style="list-style-type: none"> No requests RECOMMEND: Repeal subsection 	11/4/10: tabled 9/12/11: AMEND - wait for AG draft 9/29/11: AMEND and letter to HHS	11/17: Amend with letter to HHS
18	22	1696-D		Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> No record of any experience No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information 11/17/11: No change with letter to ENR and HHS - review letter	

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19	1696-F		Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> No record of any experience No changes 	11/4/10: tabled 9/12/11: REPEAL 5-1 (LP) 9/29/11: wait for additional information 11/17/11: No change with letter to ENR and HHS -- review letter	
20	1711-C	2	Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual	DHHS	<ul style="list-style-type: none"> Not a public records exception: info in hands of private entities, allows disclosure to Licensing 	11/4/10: tabled 9/12/11: no change	11/17: No change

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21	22	1828	Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities	DHHS	<ul style="list-style-type: none"> Request generally not denied by identifying information is redacted No changes Surveys must be reviewed by federal CMS before can be released 	11/4/10: tabled 9/12/11: tabled for more info (AG) 9/29/11: no change	11/17: No change
22	22	1848	Title 22, 1848, subsection 1, relating to documents and testimony given to Attorney General under Hospital and Health Care Provider Cooperation Act	OAG	<ul style="list-style-type: none"> Confidential under 10 §1107 and 16 §614 No requests in recent years No change DHHS, Div of Licensing and Regulatory Services; Maine Hospital Association 	11/4/10: tabled 9/12/11: no change 5-1 (SB)	11/17: No change (11-1 (SBellows))

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33	22	2706	4	Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria Amended in 2011, PL 2011, c. 58	DHHS	<ul style="list-style-type: none"> Denial of access occurs daily pursuant to statute No changes 	11/4/10: tabled 9/12/11: no change	11/17: No change
34	22	2706-A	6	Title 22, section 2706-A, subsection 6, relating to adoption contact files	DHHS	<ul style="list-style-type: none"> No FOA requests; only requests from adoptees and families Medical info protected by HIPAA No changes 	11/4/10: tabled 9/12/11: no change	11/17: No change
35	22	2769	4	Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form	DHHS	<ul style="list-style-type: none"> No FOA requests; only requests from adoptees and families Medical info protected by HIPAA No changes 	11/4/10: tabled 9/12/11: no change	11/17: No change

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36	22	3022	8, 12, 13	Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information	OAG	<ul style="list-style-type: none"> Police reports and medical records: 3-5 requests per year Suicide notes: requests extremely rare Other materials: available to attorneys in court proceedings Communications : almost never requested No changes 	11/4/10: tabled 9/12/11: no change	11/17: No change
37	22	3034	2	Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files	OAG	<ul style="list-style-type: none"> No requests RECOMMEND: give CME discretion to make identifying info public 	11/4/10: tabled 9/12/11: AMEND 9/29/11: wait for review of language 11/17/11: draft approved	11/17: Amend
38	22	3188	4	Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals	DHHS	<ul style="list-style-type: none"> Never implement RECOMMEND repeal section 	11/4/10: tabled 9/12/11: letter to HHS about repeal	11/17: No change with letter to HHS

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39	22	3192	13	Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data	DHHS	<ul style="list-style-type: none"> Never implement RECOMMEND repeal section 	11/4/10: tabled 9/12/11: letter to HHS about repeal	11/17: No change with letter to HHS
44	22	4008	1	Title 22, section 4008, subsection 1, relating to child protective records	DHHS	<ul style="list-style-type: none"> Rarely applied in FOA requests; apply when parties in litigation that does not involve the department request child protective records No changes (must comply with federal law) 	11/4/10: tabled 9/12/11: no change	11/17: No change
53	22	8707		Title 22, section 8707, relating to the Maine Health Data Organization	MHDO	<ul style="list-style-type: none"> Data release rules Only two requests, one concerned paying for the data No changes 	10/18: Table - sub-§2 no change; sub-§4 why MHCFC link? 9/12/11: tabled 9/29/11: AMEND	11/17: Amend

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54	22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	MHDO DHHS	<ul style="list-style-type: none"> No requests known Amend: "incidents reports and similar documents" 	11/4/10: tabled 9/12/11: tabled - more info and amendment language (AG) 9/29/11: Tabled 11/17/11: Tabled	
55	22	8824	2	Title 22, section 8824, subsection 2, relating to the newborn hearing program	DHHS	<ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes 	11/4/10: tabled 9/12/11: no change	11/17: No change
56	22	8943		Title 22, section 8943, relating to the registry for birth defects	DHHS	<ul style="list-style-type: none"> No requests for personally identifiable info Protected by HIPAA No changes Involve Advisory Committee if changes 	11/4/10: tabled 9/12/11: no change	11/17: No change

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57	23	63		Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority	MTA & DOT	<ul style="list-style-type: none"> Covers two categories of records Invoked rarely Subject of two Law Court cases, one LD (not enacted) No changes 	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: AMEND - review draft 11/17/11: tabled for clarification	
59	23	1980	2-B	Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike Amended by PL 2011, c. 302, §18	MTA	<ul style="list-style-type: none"> Violation Enforcement System; records license plates only See 23 §1982 No changes 	11/4/10: tabled 9/12/11: no change	11/17: No change
60	23	1982		Title 23, section 1982, relating to patrons of the Maine Turnpike	MTA	<ul style="list-style-type: none"> Toll violation system, as well as any other records Comes into play several times a year; never used in litigation in which MTA is a party No changes 	11/4/10: tabled 9/12/11: no change	11/17: No change

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61	23	4251	10	Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls	DOT	<ul style="list-style-type: none"> • Law became effective July 12, 2010 • No experience • No changes 	11/4/10: tabled 9/12/11: tabled - invite to next meeting 9/29/11: no change	11/17: No change
62	23	8115		Title 23, section 8115, relating to the Northern New England Passenger Rail Authority	NNEPRA	<ul style="list-style-type: none"> • Has not received any requests • Four types of records <ul style="list-style-type: none"> • Trade secrets • Records and correspondence relating to negotiations • Estimates of cost on projects put out to bid • Employment applications • No changes 	11/4/10: tabled 9/12/11: tabled - redraft for consistent language and policy; need review by NNEPRA 9/29/11: Tabled, need comments on draft 11/17/11: amend, divided about language	11/17: Tabled

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66 24	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ cited 2-3 times per year ▶ PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: <ul style="list-style-type: none"> ▶ MHA does not administer ▶ Not aware of requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ MMA does not administer ▶ Don't know how frequent ▶ No changes 	9/27: table - ask medical licensing boards for input; <i>Consumers for Affordable Health Care input requested</i> 11/4/10: Tabled until 2011 9/12/11: tabled for Consumers for Affordable Health Care comments 9/29/11: AMEND (with §2505); needs review 11/17/121: tabled, waiting for Medical Licensing Boards	

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67	24	2510-A		Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> ▶ Cited 2-3 times per year ▶ PROPOSED: allow Bd to access peer review reports MeHospAssn: <ul style="list-style-type: none"> ▶ Not aware of requests ▶ No changes BdofDentalEx: <ul style="list-style-type: none"> ▶ No requests ▶ n/a MeMedAssn: <ul style="list-style-type: none"> ▶ substantial experience ▶ not held by public entities so not subject to FOA ▶ no changes 	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Licensing Board 9/29/11: tabled; work with MeMedAssn and MeHospAssn on BdLicMed changes 11/17/11: tabled	

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68	24	2604	Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> 100-200 times per year No recommendation (other states allow to be released) BdofDentalEx: <ul style="list-style-type: none"> No requests n/a MedicalMutual: <ul style="list-style-type: none"> Zero requests No changes MeMedAssn: <ul style="list-style-type: none"> MMA does not administer No changes 	9/27: table - ask medical licensing boards for input 11/4/10: tabled until 2011 9/12/11: tabled - invite Med Lic Bd 9/29/11: no change	11/17: No change

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69	24	2853	1-A Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role <ul style="list-style-type: none"> Records filed with the Superior Court BdLicMed: <ul style="list-style-type: none"> Cited 100-200 times per year, but doesn't usually receive court documents No changes MeHospAssn: <ul style="list-style-type: none"> Not aware if requests are made to courts No changes BdofDentalEx: <ul style="list-style-type: none"> No requests MedicalMutual: <ul style="list-style-type: none"> No direct role in administration No changes MeMedAssn: <ul style="list-style-type: none"> MMA does not administer No changes 	9/27: table - ask medical licensing boards, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change 9/29/11: no change	11/17: No change

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70	24	2857	1, 2 Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure) (ME Medical Assoc., ME trial Lawyers Assoc., ME State Bar Assoc.)	BOI has no role <ul style="list-style-type: none"> Records of Screening Panels (Judicial Branch) BdLicMed: <ul style="list-style-type: none"> Not cited or applied; Bd doesn't receive panel information No recommendation MeHospAssn: <ul style="list-style-type: none"> Only partially administer Not aware about requests No changes BdofDentalEx: <ul style="list-style-type: none"> No requests n/a MedicalMutual: <ul style="list-style-type: none"> No direct role in administration No changes MeMedAssn: <ul style="list-style-type: none"> MMA does not administer No changes 	9/27: table - ask medical licensing boards, Courts, Maine Trial Lawyers for input 11/4/10: tabled until 2011 9/12/11: no change	11/17: No change

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73	24-A	216	2, 5	Title 24-A, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance	BOI	<ul style="list-style-type: none"> Records associated with actual or claimed violations of Insurance Code 2-4 requests per month Subpoena, hearing on motion to quash No changes MTLA: no changes 	9/27: table - ask Maine Trial Lawyers for input 9/12/11: tabled - for MTLA input 9/29/11: no change	11/17: No change
94	24-A	2393	2	Title 24-A, section 2393, subsection 2, relating to workers' compensation pool self-insurance and surcharges	BOI	<ul style="list-style-type: none"> No FOA requests No changes 	10/18: Table - obsolete? Rewrite to ensure confidentiality of old records? 9/29/11: AMEND to address when program no longer exists	11/17: Amend

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112	24-A	6807	7	Title 24-A, section 6807, subsection 7, paragraph A, relating to individual identification data of violators	BOI	<ul style="list-style-type: none">To date, the Bureau has not conducted any examinations of life settlement companies. The exception has not been cited as a basis of denial of a FOA requestNo changes	10/18: Table - ask TRecord, (subpoena) 11/4/10: divided report - no change 3-1 (SBellows) - but flag that inconsistent with treatment of examination reports 9/12/11: no action 9/29/11: letter to IFS	11/17: No change with letter to IFS

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Reinsch, Margaret

From: McCarthyReid, Colleen
Sent: Wednesday, December 07, 2011 10:15 AM
To: ajhiggins@mpbn.net; Diana DeJesus; Nass, RepJoan; Percy L. Brown & Son, Inc. ; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; Sen. Hastings; Shenna Bellows
Cc: Reinsch, Margaret
Subject: RTKAC Public Records Subcommittee--Sentinel Events Exception

All,

In anticipation of your discussion of the sentinel events provision in Title 22, section 8754, we have reviewed the laws of 27 states, including Maine, that require hospitals and other health care facilities to report sentinel events. Of those states laws, 15 states have a specific confidentiality provision in their sentinel event reporting law similar to Maine's provision. These 15 state laws designate any reports of sentinel events confidential and also include language stating that the report and information are not subject to subpoena or discovery or admissible in any civil or criminal proceeding. The states are: Connecticut, Florida, Illinois, Kansas, New Hampshire, New Jersey, New York, Nevada, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont and Wyoming. Like Maine, all of the state laws do require the state agency receiving the reports to compile an annual report (which is a public record) with aggregate information about sentinel events occurring in that state.

The 11 other state laws make no mention of confidentiality in their sentinel events laws, but the records may be designated as confidential in another section of the law or rule, e.g., general public records provisions. These states are: California, Colorado, Indiana, Kansas, Maryland, Massachusetts, Minnesota, Ohio, South Carolina, South Dakota and Washington.

For a sense of what type of information is made public regarding sentinel events in Maine, a reminder that we have posted a link on the RTKAC website to the most recent annual report on sentinel events prepared by the Department of Health and Human Services.

The link is found at http://www.maine.gov/legis/opla/sentinel_events_report.pdf

Please let us know if you have any questions or would like additional information. See you on Thursday.

Colleen and Peggy

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Public Records Exceptions Subcommittee

Exception #54 Sentinel events

Sec. 1. 24 MRSA §8754 is amended to read:

§8754. Division duties

The division has the following duties under this chapter.

1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

2. Procedures. The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

3. Confidentiality. Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

- (1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;
- (2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

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(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State.

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies.

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection.

E. For the purposes of this subsection, "privileged and confidential information" does not include:

- (1) Any final administrative action;
- (2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or
- (3) Information designated as confidential under rules and laws of this State.

This subsection does not affect the obligations of the department relating to federal law.

4. Report. The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

Public Records Exceptions Subcommittee

Proposed draft language changes

Exception #66

Professional competence reports

Sec. 1. 24 MRSA §2505 is amended to read:

§2505. Committee and other reports

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

Sec. 2. 24 MRSA § 2510, sub-§1 is amended to read:

§2510. Confidentiality of information

1. Confidentiality; exceptions. Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from reports or records

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received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

- A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;
- B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;
- C. As required by section 2509, subsection 5;
- D. Pursuant to an order of a court of competent jurisdiction; or
- E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted; or
- F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

2. Confidentiality of orders in disciplinary proceedings. Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

2-A. Confidentiality of letters of guidance or concern. Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

3. Availability of confidential information. In no event may confidential information received, maintained or developed by the board, or disclosed by the board to others, pursuant to this chapter, or information, data, incident reports or recommendations gathered or made by or on behalf of a health care provider pursuant to this chapter, be available for discovery, court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision or failure to provide health care services. This confidential information includes reports to and information gathered by a professional review committee.

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4. Penalty. Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

5. Physician-patient privilege; proceedings by board. The physician-patient privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

6. Disciplinary action. Disciplinary action by the Board of Licensure in Medicine shall be in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure shall be in accordance with Title 32, chapter 36.

SUMMARY

This amendment makes 2 changes with regard to the treatment of confidential information held by a medical licensing board.

Title 24, section 2505 allows professional competence committees, physicians and any other person to report a physician to the appropriate licensing board. This amendment clarifies that the confidentiality provisions of the Maine Health Security Act, of which section 2505 is a part, govern the confidentiality of all such reports.

Title 24, section 2510 is amended to authorize medical licensing boards to share confidential information with state and federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

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Exception #67

Confidentiality of professional competence reports

Sec. 1. 24 MRSA §2506 is amended to read:

§2506. Provider, entity and carrier reports

A health care provider or health care entity shall, within 60 days, report in writing to the disciplined practitioner's board or authority the name of any licensed, certified or registered employee or person privileged by the provider or entity whose employment or privileges have been revoked, suspended, limited or terminated or who resigned while under investigation or to avoid investigation for reasons related to clinical competence or unprofessional conduct, together with pertinent information relating to that action. Pertinent information includes: a description of the adverse action; the name of the practitioner involved; the date, the location and a description of the event or events giving rise to the adverse action; and identification of the complainant giving rise to the adverse action. Upon written request, the following information must be released to the board or authority within 20 days of receipt of the request: the names of the patients whose care by the disciplined practitioner gave rise to the adverse action; medical records relating to the event or events giving rise to the adverse action; written statements signed or prepared by any witness or complainant to the event; and related correspondence between the practitioner and the provider or entity. The report must include situations in which employment or privileges have been revoked, suspended, limited or otherwise adversely affected by action of the health care practitioner while the health care practitioner was the subject of disciplinary proceedings, and it also must include situations where employment or privileges have been revoked, suspended, limited or otherwise adversely affected by act of the health care practitioner in return for the health care provider's or health care entity's terminating such proceeding. Any reversal, modification or change of action reported pursuant to this section must be reported immediately to the practitioner's board or authority, together with a brief statement of the reasons for that reversal, modification or change. If the adverse action requiring a report as a result of a reversal, modification or change of action consists of the revocation, suspension or limitation of clinical privileges of a physician, physician assistant or advanced practice registered nurse by a health care provider or health care entity for reasons relating to clinical competence or unprofessional conduct and is taken pursuant to medical staff bylaws or other credentialing and privileging policies, whether or not the practitioner is employed by that health care provider or entity, then the provider or entity shall include in its initial report to the disciplined practitioner's licensing board or authority the names of all patients whose care by the disciplined practitioner gave rise to the adverse action. The failure of any health care provider or health care entity to report as required is a civil violation for which a fine of not more than \$5,000 may be adjudged.

Carriers providing managed care plans are subject to the reporting requirements of this section when they take adverse actions against a practitioner's credentials or employment

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for reasons related to clinical competence or unprofessional conduct that may adversely affect the health or welfare of the patient.

Sec. 2. 24 MRSA §2510-A is amended to read:

§2510-A. Confidentiality of professional competence review records

Except as otherwise provided by this chapter, all professional competence review records are privileged and confidential and are not subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity and are not admissible as evidence in any civil, judicial or administrative proceeding. Information contained in professional competence review records is not admissible at trial or deposition in the form of testimony by an individual who participated in the written professional competence review process. Nothing in this section may be read to abrogate the obligations to report and provide information under section 2506, nor the application of Title 32, sections 2599 and 3296.

1. Protection; waiver. This chapter's protection may be invoked by a professional competence committee or by the subject of professional competence review activity in any civil, judicial or administrative proceeding. This section's protection may be waived only by a written waiver executed by an authorized representative of the professional competence committee.

2. Adverse professional competence review action. Subsection 1 does not apply in a proceeding in which a physician contests an adverse professional competence review action against that physician, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in any other or subsequent proceedings seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

3. Defense of professional competence committee. Subsection 1 does not apply in a proceeding in which a professional competence committee uses professional competence review records in its own defense, but the discovery, use and introduction of professional competence review records in such a proceeding does not constitute a waiver of subsection 1 in the same or other proceeding seeking damages for alleged professional negligence against the physician who is the subject of such professional competence review records.

4. Waiver regarding individual. Waiver of subsection 1 in a proceeding regarding one physician does not constitute a waiver of subsection 1 as to other physicians.

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Exception # 57

Sec. 1. 23 MRSA § 63 is repealed and the following enacted in its place:

§63. Confidentiality of records held by Department of Transportation and Maine Turnpike Authority

1. Confidential records. The following records in the possession of the Department of Transportation and the Maine Turnpike Authority are confidential and may not be disclosed except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

2. Engineering estimates. Engineering estimates of total project costs are public after the execution of project contracts. *{Are records and data relating to engineering estimates intended to be included in what records become public upon execution of project contracts or just the engineering estimates themselves??}*

3. Records relating to negotiations and appraisals. The records and correspondence relating to negotiations for and appraisals of property are public beginning 9 months after the completion date of the project according to the record of the department or authority, except that records of claims that have been appealed to the Superior Court are public following the award of the court.

Summary

This amendment clarifies that engineering estimates are public after the execution of project contracts.

Public Records Exceptions Subcommittee
Proposed letter to ENR and HHS Committees

Exceptions 18 and 19

Sen. Thomas B. Saviello, Senate Chair
Rep. James M. Hamper, House Chair
Joint Standing Committee on Environment and Natural Resources
100 State House Station
Augusta, Maine 04333

Sen. Earle L. McCormick
Rep. Meredith N. Strang Burgess
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04333

Dear Sen. Saviello, Sen. McCormick, Rep. Hamper and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered two exceptions in Title 22 within the "Community Right-to-Know Act" to address public concerns about hazardous substances. We understand that the program within the Department of Health and Human Services has never been implemented.

The Subcommittee worked on draft language to revise the confidentiality provisions to bring the language into conformity with the standard confidentiality wording and to make clear what information collected by the Department under the program would be considered public. Ultimately, however, we are reluctant to make recommendations concerning a program that has not been implemented.

We believe that the Department of Environmental Protection may have programs that parallel or overlap the purposes of the Community-Right-to-Know Act, and we know that the Maine Emergency Management Agency and county emergency management authorities also collect information and develop emergency plans concerning hazardous substances. We hope that your committees will find the time to review the existing programs and determine whether life should be breathed into the Community Right-to-Know Act and amended appropriately, or deleted completely.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.

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Exception # 62 NNEPRA

Sec. . 23 MRSA §8115 is amended to read:

§8115. Obligations of authority

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

Sec. . 23 MRSA §8115-A is enacted to read:

§8115-A. Authority records

1. Confidential records. The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates *prepared by or at the direction of the authority* of the costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

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2. Lawyer-client privilege. The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

SUMMARY

This amendment revises the confidentiality provisions that apply to the NNEPRA's records to clarify what records are not subject to public access.

This amendment provides that records and correspondence relating to negotiations of agreements are confidential, although the final agreements are not designated confidential by this language.

Trade secrets remain confidential.

This amendment clarifies that estimates of costs of goods or services to be procured by or at the expense of the authority are confidential *if the estimates are prepared by the authority or at the direction of the authority*. The estimates do not become public over time.

This amendment revises the employment application confidentiality to track that of State, county and municipal employee applicants. All documents relating to applicants are confidential except for records pertaining to the applicant who is hired, most of which become public. Personal contact information of public employees is not a public record.

This amendment clarifies the language concerning the lawyer-client privilege; it allows the authority to claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

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